

1 Peter J. Viteznik, WSBA #25610
2 Email: pviteznik@kilmerlaw.com
3 Robert C. Muth, WSBA #49468
4 Email: rmuth@kilmerlaw.com
5 Kilmer Voorhees & Laurick, PC
2701 NW Vaughn Street, Suite 780
Portland, Oregon 97210
Phone: (503) 225-0055
5
Of Counsel for Plaintiff

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION

12 COR-RAY PAINTING, COMPANY, a
13 California Company,

14 Plaintiff,

Case No.:

COMPLAINT (Breach of Contract)

16 VIGOR WORKS, LLC, an Oregon Limited
Liability Company,

Defendant.

19 Plaintiff Cor-Ray Painting Company alleges as follows:

I. PARTIES

21 1.1 Cor-Ray Painting Company is a California company duly registered to bring this
22 action.

1.2 Vigor Works, LLC, is an Oregon limited liability company.

111

111

COMPLAINT - 1

II. JURISDICTION AND VENUE

2.1 Jurisdiction and venue are proper in this Court bases on the contractual venue provision issue associated with this claim. The contract at issue recites “Any dispute between the Parties arising out of or relating to this Agreement will be governed by the laws of the State of Washington, USA, without regard to its conflicts of law principals. ...[Cor-Ray Painting] irrevocably: (a) consent to the jurisdiction of the state and federal courts for Clark County in the State of Washington in connection with all actions arising out of this Agreement ...”

2.2 This action is brought under the Court's diversity jurisdiction 28 USC § 1332.

Damages exceed \$75,000.

III. BACKGROUND AND FACTS

3.1 Cor-Ray Painting provides blasting services to prepare surfaces for metallic painting in a host of markets.

3.2 Vigor Works provides engineering and design services for complex structures, including services for federal agencies such as the US Air Force.

3.3 Vigor Works issued Purchase Order No. 30 CLK N2819 to Cor-Ray Painting on or about September 25, 2020.

3.4 Cor-Ray Painting performed the work required under the Purchase Order. During the work, Cor-Ray issued and Vigor Works accepted a number of change orders to the scope of the work under the Purchase Order.

3.5 Vigor Works has refused to accept a number of change orders which directly affected the contract sum under the Purchase Order.

111

111

COMPLAINT - 2

3.6 Extreme weather conditions at the site of the work prevented Cor-Ray Painting from applying coating materials. The extreme weather prevented Cor-Ray Painting from operating much of the equipment necessary to complete the work.

3.7 Ground water intrusions also caused disruptions in Cor-Ray Painting's work.

IV. CLAIM FOR RELIEF

4.1 Cor-Ray Painting restates the allegations alleged in Section III.

4.2 Vigor Works has breached the Purchase Order by failing and refusing to execute change orders for costs incurred due to circumstances beyond the control of Cor-Ray Painting.

4.3 Rather than remitting monies due and owing, Vigor Works on March 31, 2021

issued a termination of the Purchase Order. Vigor Works terminated the Purchase Order solely to avoid payment of monies due and owing.

4.4 Vigor Works has a contractual duty to remit monies owing for work performed and costs incurred to complete the work due to changes outside the control of Cor-Ray Painting.

4.5 Despite timely notices of demand for payment, Vigor Works has refused to remit payment for monies due and owing.

4.6 At the time of the filing of this action, Vigor Works owes Cor-Ray Painting
\$979,569.56.

4.7 Pursuant to the Purchase Order, the prevailing party in any legal proceeding is entitled to recover its reasonable attorney fees, costs, charges and expenses.

V. JURY DEMAND

⁵¹ Cor-Ray Painting makes demand for a jury trial on all issues so triable to a jury.

111

111

COMPLAINT - 3

VI. PRAYER FOR RELIEF

Plaintiff Cor-Ray Painting, Company prays for judgment as follows:

1. An award of all monetary damages associated with Defendant's breach of contract, in the amount of \$979,569.56
2. An award of reasonable attorney fees, costs, charges and expenses incurred in prosecution of this action.
3. An award of prejudgment interest and post-judgment interest as allowed by Washington law.
4. For such other and further relief the Court deems just and equitable.

DATED this 20th day of October, 2021.

KILMER VOORHEES & LAURICK, P.C.

/s/ Peter J. Viteznik
Peter J. Viteznik, WSBA #25610
Email: pviteznik@kilmerlaw.com
Robert C. Muth, WSBA #46498
Email: rmuth@kilmerlaw.com
Phone No.: 503-224-0055
Fax No.: 503-222-5290
Attorneys for Plaintiff
I:\11124\0001\PLEADINGS\COMPLAINT.DOCX